

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 1:14-cr-00238-TWP-DKL
)	
BREON A. NICHOLS,)	-01
)	
Defendant.)	

Order Directing Filing of Notices Concerning Exhaustion of Administrative Remedies

Defendant filed a Motion for Compassionate Release pursuant to the First Step Act of 2018. Dkt. 43. The Court appointed counsel to represent Defendant, dkt. 44, and counsel has now appeared, dkt. 45.

Requests for compassionate release are governed by 18 U.S.C. § 3582(c)(1)(A)(i). That section prevents a court from modifying a sentence until “after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier.” This Court has held that the exhaustion requirement is not jurisdictional but that the Court cannot waive it over the government’s objection, even in light of the exigent circumstances caused by the COVID-19 pandemic. *See United States v. Cox*, No. 4:18-cr-17-TWP-VTW-1, Dkt. 66 (S.D. Ind. Apr. 21, 2020). Defendant’s motion does not address whether he has exhausted his administrative remedies.

Accordingly, within 7 days of date of this Order, Defendant’s counsel shall file a notice stating whether Defendant has exhausted his administrative remedies as required by § 3582(c)(1)(A). If he has not, Defendant’s counsel shall state the status of any efforts to exhaust. If Defendant is not seeking relief under § 3582(c)(1)(A)—but rather another section of the First

Step Act that does not require exhaustion—Defendant’s counsel shall so state. Within 7 days after Defendant’s counsel files this notice, the United States shall file a notice stating whether it will waive the exhaustion requirement in this case.

IT IS SO ORDERED.

Date: 4/24/2020

A handwritten signature in black ink, reading "Tanya Walton Pratt", written over a horizontal line.

TANYA WALTON PRATT, JUDGE
United States District Court
Southern District of Indiana

Distribution:

All Electronically Registered Counsel